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Exhibits: None

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. NO. 04CV11557

\* \* \* \* \*

JOSEPH BOOK,

Plaintiff

VS.

DEPARTMENT OF STATE POLICE,  
COMMONWEALTH OF MASSACHUSETTS,  
STATE TROOPER KURT M. FERRAZZANI,  
STATE TROOPER SMITH, STATE  
TROOPER McKENZIE, AND STATE  
TROOPER HENNIGAN,

Defendants

\* \* \* \* \*

Deposition of ALBERT McKENZIE, a witness called  
by counsel for the Plaintiff, pursuant to the  
applicable rules, before Lorreen Hollingsworth,  
CSR/RPR, CSR NO. 114793, and Notary Public in and for  
the Commonwealth of Massachusetts, at the Offices of  
Hinckley, Allen & Snyder, LLP, 28 State Street,  
Boston, Massachusetts, on Monday, September 18, 2006,  
at 10:30 a.m.

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1 Q So he said -- he might have had -- strike  
2 that.  
3 If I understand you, he might  
4 have said, I might have had a drink or he  
5 might have said, I might have had a sip of  
6 something?  
7 A A sip of a drink, something to that effect.  
8 Q Did you ask him how much?  
9 A Well, I asked him, yeah -- that was his  
10 answer, the sip or a drink. That was his  
11 answer to that question, yeah, how much did  
12 you have to drink.  
13 Q Did you ask him what he might have had a  
14 sip of?  
15 A I believe I did.  
16 Q What did he say?  
17 A You know, I don't recall exactly, maybe  
18 something -- it might have been a beer or a  
19 mixed drink, something to that effect. But  
20 I don't recall exactly what he said.  
21 Q Do you recall him saying, I might have had  
22 a beer or a mixed drink?  
23 A He said he had a drink. That specifically.  
24 He said that. I remember that, a drink or

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1 a sip of a drink, something to that effect.  
2 I don't recall if he said a beer or if he  
3 said he had a hard drink, like hard  
4 alcohol.  
5 Q And what did you do next?  
6 A I asked him if he would do some field  
7 sobriety tests.  
8 Q And what did he say?  
9 A He said he would.  
10 Q And what happened then?  
11 A He did the field sobriety. I asked him to  
12 state the alphabet.  
13 Q What happened?  
14 A He didn't complete the alphabet.  
15 Q Do you remember giving him that?  
16 A That's the first test I give. I do.  
17 Q Do you remember giving Mr. Book that?  
18 A Yes. I asked him to recite the alphabet.  
19 Q Where were you when you asked him to recite  
20 the alphabet?  
21 A I was right in front of him, pretty much.  
22 Q Were you at his car, or were you at the  
23 guardrail, where were you?  
24 A We were more towards the guardrail, towards

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1 the road.  
2 Q How far did he get in the alphabet?  
3 A I don't recall.  
4 Q How much of the alphabet did he recite?  
5 A I don't recall.  
6 Q What letters did he stumble on?  
7 A I don't recall.  
8 Q How did that portion of the test end, with  
9 him saying, I can't remember the rest, or  
10 him just stopping or something else?  
11 A Yeah, I don't recall. He just never  
12 completed the alphabet.  
13 Q You mean -- did you form an opinion as to  
14 whether he couldn't continue because he was  
15 unable to or because he didn't think it was  
16 necessary or because he didn't think you  
17 wanted him to?  
18 What was your -- did you form  
19 an opinion as to why he didn't complete the  
20 alphabet?  
21 A I think he thought it was a joke.  
22 Q Did you form an opinion as to whether he  
23 could not complete it or that he didn't  
24 want to complete it or he didn't think it

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1 was necessary? Did you form an opinion on  
2 any of those?  
3 A I think he thought it wasn't necessary.  
4 Q Did you form an opinion as to whether he  
5 could have completed the alphabet?  
6 A No.  
7 Q Did you ask him to complete the alphabet?  
8 A I asked him to just say the alphabet.  
9 That's what I do with everybody.  
10 Q Did you say, Mr. Book, I need to ask you to  
11 recite the alphabet? At some point, I  
12 understand, he stopped, to your memory?  
13 A That, I can recall, yeah. He never  
14 completed the alphabet, is what I'm saying.  
15 Q So at some point he stopped --  
16 A Yeah.  
17 Q -- somewhere in the process of reciting the  
18 alphabet.  
19 At the point where he stopped,  
20 did you ask him to complete that exercise?  
21 A I don't recall if I did or not.  
22 Q What happened next?  
23 A Oh, the next test is the one-leg stand.  
24 Q And what happened with that?

23 (Pages 86 to 89)

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1 A I explained it and demonstrated it.  
 2 Q And what happened?  
 3 A He couldn't do it.  
 4 Q Can you be more specific in terms of what  
 5 happened?  
 6 A I think he thought it was a joke again. I  
 7 think he was, like, I can't do it.  
 8 Q Did he try?  
 9 A I don't believe he did.  
 10 Q Did he say he couldn't do it because of his  
 11 age or his physical condition or that he  
 12 didn't want to? Tell me as much as you  
 13 recall.  
 14 I'm sorry, let me back up.  
 15 Do you have a recollection of  
 16 asking him -- strike that.  
 17 Do you have a recollection of  
 18 describing for him the one-leg stand test?  
 19 A Of me describing it?  
 20 Q Yes.  
 21 A Yes.  
 22 Q Do you have a clear recollection of doing  
 23 that?  
 24 A I do it to everyone.

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1 After I ask them, you know,  
 2 the next test is the one-leg stand, I  
 3 explain it and I demonstrate it and ask  
 4 them, you know, Can you do it? Do you want  
 5 to do it? And I don't think he was taking  
 6 any of it seriously.  
 7 Q Well, can you be more descriptive in terms  
 8 of him asking you and what his response  
 9 was? I understand you formed the  
 10 impression he wasn't taking it seriously.  
 11 Can you tell me in more detail  
 12 what your words were to him in terms of  
 13 that test and his response?  
 14 A What I said?  
 15 Q Yes.  
 16 A I'll tell you how I describe it.  
 17 Q I'm trying to segregate what your typical  
 18 practice is and what you recall on that  
 19 day.  
 20 Do you recall what you said to  
 21 him?  
 22 A I asked him to do the one-leg stand and I  
 23 demonstrated it. Sir, you've got to keep  
 24 your hands by your side, raise one of your

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1 legs approximately 6 inches off the ground,  
 2 and count out loud to 30.  
 3 I don't recall if I actually  
 4 modified the test. I might have. I don't  
 5 recall if I did. And I demonstrated -- I  
 6 normally only go to the count of ten when I  
 7 do that and I normally keep my foot up and  
 8 ask them, Do you think you can do the test?  
 9 Would you like to continue?  
 10 And I think Mr. Book thought  
 11 it was a joke.  
 12 Q What did he say to you --  
 13 A I don't recall. Then he laughed, best I  
 14 can remember. I don't think he --  
 15 Q What did he say? What do you recall him  
 16 saying, if anything?  
 17 A I don't recall anything specific at that  
 18 point. He just wanted to go home.  
 19 Q What happened next?  
 20 A Well, the next test is the nine-step  
 21 heel-to-toe.  
 22 Q And on this occasion, tell me what you  
 23 recall your saying to Mr. Book and what his  
 24 response was.

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1 A I demonstrate the test, you know, try to  
 2 keep your hands by your side, walk  
 3 heel-to-toe on an imaginary line counting  
 4 out loud each step, one, two, three. I  
 5 normally demonstrate to three. I tell them  
 6 when you get to nine, go, Nine, simply turn  
 7 around, and use again an imaginary line and  
 8 attempt to walk heel-to-toe for nine more  
 9 steps, counting out loud with your hands by  
 10 your side.  
 11 Q And what was Mr. Book's response?  
 12 A I think he still thought it was a joke.  
 13 But he -- if I can recall, he attempted  
 14 that test.  
 15 Q What happened?  
 16 A He never completed it.  
 17 Q Why not?  
 18 A He just never completed it.  
 19 Q Because he couldn't or because he didn't  
 20 want to? What happened?  
 21 A I think part of it was he didn't want to.  
 22 I think, again, he thought the whole thing  
 23 was a joke. He just wanted to go home.  
 24 Q What did you see him do?

24 (Pages 90 to 93)

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1 A I don't recall the exact --  
 2 Q Did he appear to you to be -- how did he  
 3 appear to be walking to you?  
 4 A He was unsteady.  
 5 Q Did he have a limp?  
 6 A I don't recall if he had a limp, but he was  
 7 unsteady.  
 8 Q Did you form an opinion as to whether the  
 9 unsteadiness was due to age or something  
 10 else?  
 11 A At the end of all the tests?  
 12 Q At any time.  
 13 A I formed the opinion that he was operating  
 14 his motor vehicle under the influence after  
 15 the tests.  
 16 Q In terms of his unsteadiness, did you form  
 17 an opinion as to what was the cause of the  
 18 unsteadiness?  
 19 A My opinion, he was under the influence.  
 20 Q Did you make any determination, apart from  
 21 that, as to whether his age contributed to  
 22 any unsteadiness?  
 23 A It could have. His age could have  
 24 contributed, but my opinion was he was

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1 under the influence.  
 2 Q I understand it could have. But what did  
 3 you determine? Did you determine that his  
 4 age factored -- I understand your  
 5 testimony, you believe he was intoxicated.  
 6 A Yes.  
 7 Q Did you make a determination as to whether  
 8 any part of his unsteadiness was due to his  
 9 age?  
 10 A It's a factor while we're doing the test.  
 11 As I told you before, I've modified tests  
 12 before. It is a factor that you look into.  
 13 But at that point, I determined that he was  
 14 under the influence. That's the best way I  
 15 can answer that question.  
 16 Q Okay. So you didn't -- would it be  
 17 accurate to say, then, that you did not  
 18 make a determination as to what impact, if  
 19 any, his age had on his unsteadiness?  
 20 A At that point?  
 21 Q Yes.  
 22 A No. It was a factor, as everything is, you  
 23 know, when you're making that  
 24 determination.

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1 Q What happened after the nine-step test?  
 2 A I formed the opinion he was operating under  
 3 the influence. Trooper Ferrazzani asked  
 4 me. I told him that I formed the opinion  
 5 that he was operating under the influence,  
 6 and Mr. Book was placed under arrest at  
 7 that point.  
 8 Q How long did the tests take?  
 9 A Probably only takes about -- I mean, it can  
 10 take five to ten minutes. It might be a  
 11 little less; it might be a little more.  
 12 Q How long did it take on this occasion?  
 13 A Again, I don't recall exactly.  
 14 Q Where were you when you were performing the  
 15 test?  
 16 A On Route 1 or, you know --  
 17 Q Near the guardrail location --  
 18 A We were as close as we could be off to the  
 19 right.  
 20 Q I need to finish the question.  
 21 Were you near the location  
 22 where Mr. Book was against the guardrail  
 23 when you first arrived?  
 24 A Yes.

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1 Q Did the test take -- to your recollection,  
 2 did the test take more or less than ten  
 3 minutes?  
 4 A I'd say about ten, that I can recall, maybe  
 5 less.  
 6 Q How did it come about that you had further  
 7 communication with Trooper Ferrazzani after  
 8 administering the test?  
 9 A Well, he was there, and I just told him.  
 10 He had come back to the -- towards us.  
 11 Q So Ferrazzani returned to where you were?  
 12 A At some point, yeah.  
 13 Q Was there a delay between your completion  
 14 of the test and Trooper Ferrazzani  
 15 arriving?  
 16 A I don't recall exactly if there was.  
 17 Q Who placed Mr. Book under arrest?  
 18 A Trooper Ferrazzani did.  
 19 Q Where were you when that was happening?  
 20 A I was right there, right next to him.  
 21 Q And what happened after he was arrested?  
 22 A Mr. Book was placed in the back seat of  
 23 Trooper Ferrazzani's cruiser.  
 24 Q And what happened next?

25 (Pages 94 to 97)